IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.02.2007

CORAM

THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

A.S.No.351 OF 1990

Director of School
Education,
D.P.I. Compound,
College Road, Nungambakkam,
Madras-6. .. Appellant(2nd Defendant)

Vs.

1. R.Prema Bai

2. The Manager and Correspondent,
Saraswathi Sangam Middle School,
No.88, Pidariyar Koil Street,
Madras. .. Respondents(Plaintiff & 1st Defendant)

prayer: This appeal has been filed against the judgment and decree, dated 11.04.1989, passed in O.S.No.2096 of 1984 on the file of the II Additional Judge, City Civil Court, Madras.

For Appellant : Mr.V.Ravi, G.A (A.S)
For 1st Respondent : No Appearance
For 2nd Respondent : Mr.V.Raja Narayanan

JUDGMENT

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This appeal is filed against the judgment and decree dated 11.04.1989 passed in O.S.No.2096 of 1984 on the file of the II Additional Judge, City Civil Court, Madras.

2. The learned Subordinate Judge after analysing the evidence found that the plaintiff is entitled for the suit claim and accordingly decreed the suit.

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3. For convenience, the parties are referred as arrayed in the suit.

4. The case of the plaintiff is as follows:-

(i) The plaintiff is a qualified Secondary Grade Teacher and has been appointed in the permanent vacancy by the first defendant in his institution on and from 30th March 1971. She has been handling classes up to VIII Standard. Her salary along with Dearness Allowance as last drawn in the month of March 1979 was Rs.550/- per month. As the Plaintiff has not been paid the salary from March 1979 till the end of September 1980 for 19 months, she was obliged to file a suit in O.S.No.6916/1980 for recovery of Rs.10,450/-, being the arrears of salary together with interest at 12% from the date of the plaint against both the defendants.

(ii) Even from October 1980, the defendants are liable to pay the salary up to the end of February 1984 for 41 months. During this period, increments have to be paid according to the salary. Hence the present suit.

5. The averments made in the written statement filed by the 2nd defendant are stated as follows:

(i) No notice as contemplated under Section 80 CPC has been issued. The teaching staff has been fixed according to the strength fixed as per G.O.Ms.No.250 Education dated 29.02.1964. The staff strength was varied because of the fluctuation in the monthly attendance of the pupil. Hence the question of permanent vacancy does not arise. The District Educational Officer released the teaching grant on the basis of average attendance of the pupil of the school.

(ii) The first defendant's duty is to present teaching Grant claims to the Deputy Inspector of Schools. The deputy Inspector of Schools assesses the Teaching Grant as per average attendance and sends his recommendations to the District Educational Officer. On the Deputy Inspector's recommendation, the District Educational Officer shall release the teaching grant bills to the Secretary of the School who shall disburse the pay and allowances to the Teachers and other persons employed in a Private School.

(iii) The average attendance allowed for employment of only 16 teachers in Saraswathi Sangam Middle School, the 2nd respondent herein. As there was a fall in strength, the plaintiff, being the junior most Teacher in the said school was deployed on 2.3.1979 and transferred to another school, viz. Ananthanayagi Primary School, Vysarpadi as per the Rules by the District Educational Officer,

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Madras North. The plaintiff should have joined the said Ananthanayagi Primary School, Vyasarpadi as ordered by the District Educational Officer, but she has not joined the said school. The plaintiff ceased to be a teacher in Saraswatahi Sangam Middle School since 2.3.1979 and therefore she is not eligible for any teaching grant from March, 1979. She is not in service in Saraswathi Sangam Middle School as she has been deployed on 2.3.1979 and transferred to Ananthanayagi Primary School, Vyasarpadi and therefore she is not entitled to claim any salary from 2.3.1979. The plaintiff's remedy is only against the first defendant.

(iv) Therefore, the plaintiff is not entitled to claim salary from 1.10.1980 till the end of February, 1984 amounting to Rs.30,880/- and the second defendant is not liable to pay the said amount of Rs.30,880/- or any other amount and her remedy is only against the first defendant. Hence, the suit is liable to be dismissed.

6. The first defendant filed a memo adopting the written statement filed by the 2nd defendant.

7. The plaintiff was examined as P.W.1. No exhibit has been marked on the side of the plaintiff. Mr.S.K.Mothilal was examined as D.W.1. Exs.B.1 to B.4 were marked on the side of the defendants to confront the claim of the defendants.

8. The lower Court after analysing the evidence found that the plaintiff is entitled to get the arrears amount from October 1980 to February 1984 with 12% interest from the date of claim till the amount is settled to the plaintiff. The present appeal is filed by the 2nd defendant as against the finding of the lower Court.

9. The first respondent herein is the plaintiff, the second respondent herein is the first defendant and the appellant herein is the second respondent in O.S.No.2096 of 1984.

10. Upon hearing the rival claims, the points for determination are:

i) Whether the 1st defendant school is functioning even now?

ii) whether the joining instruction is necessary to give effect to the transfer order?

iii) Whether the suit notice under Section 80 CPC was given to sustain the claim of the plaintiff?

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iv) Whether the suit claim with reference to the salary for the month of October 8^0 to February 84 is barred by limitation.

v) Whether the suit claim against the first defendant is maintainable?

Point No.1

11. It is the case of the appellant and the first defendant that the first defendant's school is not functioning and the same has been closed long time back.

12. The plaintiff/1st defendant has not answered objecting the contention of the appellant and the first respondent in this regard. In such view of the fact, I am of the view that the first defendant school is not functioning as on date to sustain the suit claim of the plaintiff. Hence this point is answered against the plaintiff.

Point No.2

13. It is the specific case of the plaintiff before the lower Court that though the transfer order passed, no relieving instruction was issued by the first defendant school management and therefore, she was not in a position to join in the transferred post.

(ii) The learned counsel for the appellant/ first defendant would submit that since the post in which the plaintiff was working itself was transferred to Ananthanayagi Primary School, Vyasarpadi there has no need for issuing any relieving order. The need of joining institution, though she was not relieved on the basis of transfer order, is the point to be proved to sustain her claim. At this juncture it is useful to refer to the recitals in Ex.B.2, which read as follows:

> "As per orders issued in this office reference cited, one post of Secondary Grade with Tmt R.Pramabai is transferred from Saraswathi Sangam Middle School, Madras-1 to Anandanayagi Primary School, Vyasarpadi with effect from 3.2.1979.
>
> Tmt. R. Pramabai, Secondary Grade Teacher is instructed to join duty in Anandanayagi Primary School, Vyasarpadi at once.
>
> It is also informed that the Secondary Grade post has already been transferred from 3.2.79 to

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Anandanayagi Primary School and the Headmaster should not claim the salary for the teacher from Saraswathi Sangam Aided Middle School, Madras – 1 as the post is no longer there."

(iii) It has been specifically informed in the said Transfer order that "one post of Secondary Grade with Tmt. R. Prema Bai is transferred from Saraswathi Sangam Middle School, Madras -1 to Ananthanayagi Primary School, Vyasarpadi with effect from 3.2.1979. This order shows that one post of Secondary Grade in Saraswathi Sangam Middle School, Madras – 1 has been transferred with effect from 3.2.1979. That means this post in which the plaintiff was working became non-existent from 3.2.1979. Only in case the post in existence became vacant in pursuance of the transfer of an employee, the question of issuing relieving order would arise. But the case on hand is otherwise. The said order further informed the Head Master of Ananthanayagi Primary School that the Head master should not claim the salary for the teacher from Saraswathi Sangam Aided Matriculation School, Madras -1 as the post is no longer in existence due to the transfer with effect from 3.2.1979. Therefore, it is very clear that the plaintiff cannot claim any salary from the defendants representing Saraswathi Sangam Middle School, Madras – 1.

(iv) The lower Court without looking into this legal position, held that the defendants are liable to pay salary to the plaintiff for the period claimed as her joining instructions were not issued in pursuance of the transfer order.

(v) The facts on hand would clearly establish, by a reading of the Government order, which is marked as Ex.B.4 that the direction of the 2nd defendant in Ex.B.2 would show that joining instructions as claimed by the plaintiff are not necessary to give effect to the transfer and hence, as regards the 2nd question, this point is answered against the plaintiff.

Point No.3.

14. Admittedly the suit was filed without issuing notice under Section 80 of CPC. The plaintiff has not filed an application for dispensing with the issue of notice under Section 80 CPC. In such view of the fact, I am satisfied that the plaintiff cannot sustain the suit claim without issuing notice under Section 80 CPC. Hence as regards the 3rd question, this point is answered against the plaintiff.

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Point No.4.

15. Admittedly, the present suit was filed only on 7.3.1984. The suit claim is for the period from October 1980 to February 1984. The suit claim for this period is barred by limitation, as contended by the learned counsel for the appellant. Hence, as regards the 4th question, this point is answered against the plaintiff.

Point No.5.

16. Even according to the plaint pleadings, the plaintiff has been receiving salary only from the 2nd defendant. If at all there is a claim, the plaintiff can sue only against the 2nd defendant as he is the proper person to pay salary to the plaintiff. The first defendant is not in any way concerned with the payment of salary to the plaintiff, since the 1st defendant is only an aided school functioning on the direction of the 2nd defendant.

17. Even the lower Court rendered a specific finding that the suit claim is maintainable only against the 2nd defendant and not against the 1st defendant. Hence this point is answered in favour of the 1st defendant.

18. In view of the finding rendered on the points referred to above, this appeal is allowed. The finding of the lower Court in decreeing the suit in O.S.No.2096/1984 is set aside and accordingly, the suit is dismissed. However the parties have to bear the respective costs.

cla

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,City Civil Court,Madras.

2. The Record Keeper,V.R. Section,High Court, Madras-104.

+ 1 cc to the Government Pleader, SR No.8057

PV(CO)
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